

AMENDED IN ASSEMBLY JUNE 21, 2010

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 13, 2010

**SENATE BILL**

**No. 1040**

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**Introduced by Senator Padilla**

February 12, 2010

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An act to amend Section 281 of the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Padilla. Telecommunications universal service programs: California Advanced Services Fund.

The existing federal Telecommunications Act of 1996 establishes a program for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations, as defined. Existing law, until January 1, 2013, establishes the California Advanced Services Fund (CASF) in the State Treasury, and requires a surcharge, which is imposed by the commission and collected through retail telecommunications customers' bills, to be deposited in that fund. Existing law prohibits the commission from collecting more than \$100,000,000 through the surcharge. Existing law requires the commission to develop, implement, and administer the CASF to provide for transfer payments to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in a specified decision of the commission. Existing law requires the commission to conduct both a financial audit and a performance audit on the implementation and effectiveness of CASF and to report its findings to the Legislature by December 31, 2010.

This bill would extend the operation of these provisions indefinitely, and would prohibit the commission from collecting more than \$225,000,000 through the CASF surcharge *pursuant to a specified schedule*. The bill would require the commission to conduct an interim and final financial audit and interim and final performance audit on the implementation and effectiveness of CASF and, to report to the Legislature its interim findings by December 31, 2010, and its final findings by April 1, 2017. *The bill would require the commission to annually provide a report to the Legislature, until January 1, 2016, relating to the CASF and containing specified information.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 281 of the Public Utilities Code is
- 2 amended to read:
- 3 281. (a) The commission shall develop, implement, and
- 4 administer the California Advanced Services Fund to encourage
- 5 deployment of high-quality advanced communications services to
- 6 all Californians that will promote economic growth, job creation,

1 and the substantial social benefits of advanced information and  
2 communications technologies, as provided in Decision 07-12-054  
3 and Decision 09-07-020 and this section. The commission shall  
4 establish the following accounts within the fund:

5 (1) The Broadband Infrastructure Grant Account.

6 (2) The Rural and Urban Regional Broadband Consortia Grant  
7 Account.

8 (3) The Broadband Infrastructure Revolving Loan Account.

9 (b) (1) All moneys collected by the surcharge authorized by  
10 the commission pursuant to Decision 07-12-054, whether collected  
11 before or after January 1, 2009, shall be transmitted to the  
12 commission pursuant to a schedule established by the commission.  
13 The commission shall transfer the moneys received to the  
14 Controller for deposit in the California Advanced Services Fund.  
15 Moneys collected after January 1, 2011, shall be deposited in the  
16 following amounts in the following accounts:

17 (A) One hundred million dollars (\$100,000,000) into the  
18 Broadband Infrastructure Grant Account.

19 (B) Ten million dollars (\$10,000,000) into the Rural and Urban  
20 Regional Broadband Consortia Grant Account.

21 (C) Fifteen million dollars (\$15,000,000) into the Broadband  
22 Infrastructure Revolving Loan Account.

23 (2) All interest earned on moneys in the fund shall be deposited  
24 in the fund.

25 (3) The commission shall not collect moneys, by imposing the  
26 surcharge described in paragraph (1) for deposit in the fund, in an  
27 amount that exceeds ~~a total amount of two hundred twenty-five~~  
28 ~~million dollars (\$225,000,000)~~ *one hundred million dollars*  
29 *(\$100,000,000) before January 1, 2011. After January 1, 2011,*  
30 *the commission may collect an additional sum not to exceed*  
31 *twenty-five million dollars (\$25,000,000) per year beginning with*  
32 *the calendar year starting on January 1, 2011, and continuing*  
33 *through the 2015 calendar year, for a sum total of moneys collected*  
34 *by imposing the surcharge described in paragraph (1) not to exceed*  
35 *two hundred twenty-five million dollars (\$225,000,000).*

36 (c) (1) All moneys in the California Advanced Services Fund  
37 shall be available, upon appropriation by the Legislature, to the  
38 commission for the program administered by the commission  
39 pursuant to this section, including the costs incurred by the

1 commission in developing, implementing, and administering the  
2 program and the fund.

3 (2) Notwithstanding any other law and for the sole purpose of  
4 providing matching funds pursuant to the federal American  
5 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any  
6 entity eligible for funding pursuant to that act shall be eligible to  
7 apply to participate in the program administered by the commission  
8 pursuant to this section, if that entity otherwise satisfies the  
9 eligibility requirements under that program. Nothing in this section  
10 shall impede the ability of an incumbent local exchange carrier,  
11 as defined by subsection (h) of Section 251 of Title 47 of the  
12 United States Code, that is regulated under a rate of return  
13 regulatory structure, to recover, in rate base, California  
14 infrastructure investment not provided through federal or state  
15 grant funds for facilities that provide broadband service and  
16 California intrastate voice service.

17 (d) Moneys in the Rural and Urban Regional Broadband  
18 Consortia Grant Account shall be available for grants to eligible  
19 consortia to fund the cost of broadband deployment activities other  
20 than the capital cost of facilities, as specified by the commission.  
21 An eligible consortium may include, as specified by the  
22 commission, representatives of organizations, including, but not  
23 limited to, local and regional government, public safety, K-12  
24 education, health care, libraries, higher education,  
25 community-based organizations, tourism, parks and recreation,  
26 agricultural, and business, and is not required to have as its lead  
27 fiscal agent an entity with a certificate of public convenience and  
28 necessity.

29 (e) Moneys in the Broadband Infrastructure Revolving Loan  
30 Account shall be available to finance capital costs of broadband  
31 facilities not funded by a grant from the Broadband Infrastructure  
32 Grant Account. The commission shall periodically set interest rates  
33 on the loans based on surveys of existing financial markets.

34 (f) (1) The commission shall conduct an interim and final  
35 financial audit and an interim and final performance audit of the  
36 implementation and effectiveness of the California Advanced  
37 Services Fund to ensure that funds have been expended in  
38 accordance with the approved terms of the grant awards and loan  
39 agreements and this section. The commission shall report its interim  
40 findings to the Legislature by December 31, 2010. The commission

1 shall report its final findings to the Legislature by April 1, 2017.  
2 The reports shall also include an update to the maps in the final  
3 report of the California Broadband Task Force and data on the  
4 types and numbers of jobs created as a result of the program  
5 administered by the commission pursuant to this section.

6 (2) (A) The requirement for submitting a report imposed under  
7 paragraph (1) is inoperative on January 1, 2018, pursuant to Section  
8 10231.5 of the Government Code.

9 (B) A report to be submitted pursuant to paragraph (1) shall be  
10 submitted in compliance with Section 9795 of the Government  
11 Code.

12 (g) (1) *Beginning on January 1, 2012, and annually thereafter,*  
13 *the commission shall provide a report to the Legislature that*  
14 *includes all of the following information:*

15 (A) *The amount of funds expended from the California Advanced*  
16 *Services Fund in the prior year.*

17 (B) *The recipients of funds expended from the California*  
18 *Advanced Services Fund in the prior year.*

19 (C) *The geographic regions of the state affected by funds*  
20 *expended from the California Advanced Services Fund in the prior*  
21 *year.*

22 (D) *The expected benefits to be derived from the funds expended*  
23 *from the California Advanced Services Fund in the prior year.*

24 (E) *Actual broadband adoption levels from the funds expended*  
25 *from the California Advanced Services Fund in the prior year.*

26 (F) *The amount of funds expended from the California Advanced*  
27 *Services Fund used to match federal funds.*

28 (G) *An update on the expenditures from California Advanced*  
29 *Services Fund and broadband adoption levels, and an accounting*  
30 *of remaining unserved and underserved areas of the state.*

31 (2) (A) *The requirement for submitting a report imposed under*  
32 *paragraph (1) is inoperative on January 1, 2016, pursuant to*  
33 *Section 10231.5 of the Government Code.*

34 (B) *A report to be submitted pursuant to paragraph (1) shall*  
35 *be submitted in compliance with Section 9795 of the Government*  
36 *Code.*

37 SEC. 2. This act is an urgency statute necessary for the  
38 immediate preservation of the public peace, health, or safety within  
39 the meaning of Article IV of the Constitution and shall go into  
40 immediate effect. The facts constituting the necessity are:

1 Numerous grant applications with merit have been filed seeking  
2 funding through the California Advanced Services Fund, many of  
3 these applications also seeking funding through the federal  
4 American Recovery and Reinvestment Act of 2009 (Public Law  
5 111-5), and these grant applications threaten to exceed the existing  
6 financial limits of the fund. In order to relieve financial pressure  
7 on the fund, enable meritorious projects to go forward, and to  
8 prevent a potential disruptive effect on the grant process, it is  
9 necessary that this act take effect immediately.

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